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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 INFOBIP, LTD., a United Kingdom Private Limited
13 Company,

14 Plaintiff,

15 vs.

16 RINGCAPTCHA, INC., a foreign Delaware
17 Corporation, and et al,

18 Defendant.

CASE NO. 2:22-cv-01244-APG-BNW

**PLAINTIFF/
COUNTERDEFENDANT'S
REPLY TO COUNTERCLAIM**

19 And Related Counterclaim

20
21 COMES NOW, INFOBIP, LTD, (Plaintiff/Counterdefendant)a Private Limited
22 Company, registered in the United Kingdom, (hereinafter "INFOBIP"), by and through its
23 counsel of record Gordon Rees Scully and Mansukhani LLP and files this Reply to Defendant's
24 Counterclaim as follows:

25 **PARTIES**

- 26 1. In Answer to par. 1, Counterdefendant admits the allegation.
27 2. In Answer to par. 2, Counterdefendant admits the allegations.
28

1 21. In Answer to par. 21, Counterdefendant denies the allegations.

2 22. In Answer to par. 22, Counterdefendant denies the allegations.

3 23. In Answer to par. 23, Counterdefendant denies the allegations.

4 24. In Answer to par. 24, Counterdefendant denies the allegations.

5 **FIRST CLAIM FOR RELIEF**

6 **(Breach of Contract)**

7 25. In Answer to par. 25, Counterdefendant repeats and realleges its answers to each
8 and every allegation in paragraphs 1-24 as if though fully set forth herein.

9 26. In Answer to par. 26, Counterdefendant admits the allegations.

10 27. In Answer to par. 27, Counterdefendant denies the allegations.

11 28. In Answer to par. 28, Counterdefendant denies the allegations.

12 29. In Answer to par. 29, Counterdefendant denies the allegations.

13 30. In Answer to par. 30, Counterdefendant denies the allegations.

14 **SECOND CLAIM FOR RELIEF**

15 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

16 31. In Answer to par. 31, Counterdefendant repeats and realleges its answers to each
17 and every allegation in paragraphs 1-30 as if though fully set forth herein.

18 32. In Answer to par. 32, Counterdefendant denies the allegations.

19 33. In Answer to par. 33, Counterdefendant admits the allegations.

20 34. In Answer to par. 34, Counterdefendant denies the allegations.

21 35. In Answer to par. 35, Counterdefendant denies the allegations.

22 36. In Answer to par. 36, Counterdefendant denies the allegations.

23 37. In Answer to par. 37, Counterdefendant denies the allegations.

24 38. In Answer to par. 38, Counterdefendant denies the allegations.

25 39. In Answer to par. 39, Counterdefendant denies the allegations.

26 40. In Answer to par. 40, Counterdefendant denies the allegations

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THIRD CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

41. In Answer to par. 41, Counterdefendant repeats and realleges its answers to each and every allegation in paragraphs 1-40 as if though fully set forth herein.

42. In Answer to par. 42, Counterdefendant denies the allegations.

43. In Answer to par. 43, Counterdefendant denies the allegations.

44. In Answer to par. 44, Counterdefendant denies the allegations.

45. In Answer to par. 45, Counterdefendant denies the allegations.

46. In Answer to par. 46, Counterdefendant denies the allegations.

47. In Answer to par. 47, Counterdefendant denies the allegations.

48. In Answer to par. 48, Counterdefendant denies the allegations.

FOURTH CLAIM FOR RELIEF

(Negligence)

49. In Answer to par. 49, Counterdefendant repeats and realleges its answers to each and every allegation in paragraphs 1-48 as if though fully set forth herein.

50. In Answer to par. 50, Counterdefendant denies the allegations.

51. In Answer to par. 51, Counterdefendant denies the allegations.

52. In Answer to par. 52, Counterdefendant denies the allegations.

53. In Answer to par. 53, Counterdefendant denies the allegations.

AFFIRMATIVE ANSWERS

FIRST DEFENSE

(Failure to State a Claim)

Counterclaimant's Complaint, and each and every claim for relief therein, fails to state facts sufficient to state a viable claim against Plaintiff upon which relief can be granted.

SECOND DEFENSE

(Forum Contractual Choice of Law)

The subject agreement has a contractual choice of law applying the laws of England to this dispute. The choice of law is a valid contractual choice of law regardless of the defense of

1 adhesion and unconscionability. English law governs this commercial dispute.

2 **THIRD DEFENSE**

3 **(Application of English Law)**

4 Applying English law to this commercial dispute, the Counterclaimant's claims for relief
5 breach of the implied covenant of good faith, breach of fiduciary duty, punitive damages are not
6 valid claims.

7 **FOURTH DEFENSE**

8 **(Contractual Limitations on Claims)**

9 Subject to the contractual limitations on liability, the Counterclaimant's claims for relief
10 are barred from claims for any loss of profits, revenue, anticipated profits or business, or for any
11 indirect, incidental, consequential, special, punitive or exemplary damages.

12 **FIFTH DEFENSE**

13 **(CISG PREEMPTION)**

14 The underlying contractual agreement is subject to the United Nations Convention on
15 Contracts for the International Sales of Goods (CISG). As a matter of U.S. Law this is deemed
16 applicable domestic law to all U.S. states. This agreement is subject to Federal law which
17 preempts any conflicting law under the "supremacy clause" of the U.S. Constitution. The CSIG
18 supercedes the Nevada law applicable to its Uniform Commercial Codes, which includes the
19 doctrine of unconscionability.

20 **SIXTH DEFENSE**

21 **(Waiver)**

22 Counterclaimant's claims are barred, in whole or in part, due to Counterclaimant's failure
23 to comply with the contract's requirements for notice of disputes in accordance with a 30 day
24 notice provision(s).

25 **SEVENTH DEFENSE**

26 **(Punitive Damages)**

27 Under Nevada law, both the U.S. Constitution and the Nevada law applicable to same,
28 bar excessive punitive damages under a ratio limitations doctrine. This is applied under the Due

1 Process Clause of the Fourteenth Amendment, and Excessive Fines Clause of the Eighth
2 Amendment. Furthermore, under NRS 42.005(1)(a)(b), punitive damages are capped.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Plaintiff/Counterclaimant prays for the following:

- 5 1. That Counterclaimant take nothing from Plaintiff by way of its Counterclaim;
6 2. That this Court dismiss the Counterclaim with prejudice.
7 3. For an award of cost of suit and attorney's fees and costs according to the English
8 law.
9 4. For an award of costs of suits and attorney's fees in accordance with American
10 law.
11 5. For such other relief as this Court deems just and proper in the premises.

12
13 DATED this 21st day of October 2022.

14 **GORDON REES SCULLY MANSUKHANI, LLP**

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16 By: /s/ *Thierry V. Barkley*
17 SEAN P. FLYNN, ESQ.
18 THIERRY V. BARKLEY, ESQ.
19 *Attorneys for Plaintiff/*
20 *Counterdefendant Infobip, Ltd.*
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October 2022, I caused a true and accurate copy of the foregoing document entitled, **PLAINTIFF'S/COUNTERDEFENDANT'S REPLY TO COUNTERCLAIM**, to be electronically filed with the Clerk of the Court using CM/ECF service to parties listed below:

John J. Savage, Esq.
Howard & Howard Attorneys PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, NV 89169

/s/ Sam Baker
An employee of GORDON REES
SCULLY MANSUKHANI, LLP